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S.B. CIVIL MISC. APPEAL NO.1892/2004.
(Narayan Ram Vs. Deva Ram & Ors.)

Date of Order :: 27.10.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellant.
Mr. D.S. Neembla }
Mr. O.P. Singhvi }, for the respondents.

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Heard learned counsel for the appellant.

This appeal preferred by the claimant-appellant against the award dated 14.07.2004 made by the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No.4), Jodhpur in Claim Case No.481/2004 was taken up for consideration on 06.12.2004 and at the submission of learned counsel for the appellant, following order was passed:-

> "Learned counsel for the appellant submits that the appellant would be satisfied if the matter is settled through Lok Adalat for compensation of Rs.1,21,000/-. Issue notice to the respondents as to why the matter should not be finally disposed of by way of settlement before Lok Adalat.
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> The matter be placed before the ensuing Lok Adalat, being held in High Court on 22.1.2005. Notice be given to the respondent to appear before the Lok Adalat on the aforesaid date."

Perusal of the record shows that thereafter the matter was placed before the Permanent Lok Adalat but

learned Members of the Permanent Lok Adalat noticed that nobody appeared for the parties; and the parties or their counsel were not assisting the Lok Adalat for arriving at a settlement and hence the matter has been referred to the Court.

Having regard to the facts and circumstances of the case, learned counsel for the appellant has been heard for admission.

This appeal has been submitted seeking enhancement over the amount of Rs.80,000/- awarded by the Tribunal as compensation to the claimant-appellant Narayan Ram for the loss suffered by him due to the injuries sustained in a vehicular accident.

For quantification of compensation, the Tribunal has taken note of the entire evidence available on record; has accepted that the claimant-appellant suffered 25% permanent disablement but with reference to his injury report Ex.4, his permanent disablement certificate Ex.50 and his discharge ticket Ex.51 has noticed that there was serious discrepancy about the age of the injured-claimant ranging between 55 to 65 years. The Tribunal has accepted the age of the injured-claimant at 65 years stated in his discharge ticket Ex.51 and applied the multiplier of 5 after assessing his income at Rs.3,000/- per month as an agricultural labour to allow

Rs.45,000/- towards disablement. The Tribunal has allowed Rs.6,000/- towards treatment expenditure on the basis of medical bills Ex. 13 to Ex.49 and has further allowed Rs.5,700/- for 19 days' hospitalisation; Rs.10,000/- for pains and sufferings; Rs.6,000/- for two months' loss of income; and so also Rs.7,300/- for future treatment.

Learned counsel for the appellant has strenuously contended that from the medical evidence produced on record and the testimony of the Orthopedist Dr. Mahendra Kumar, AW-3, it was amply established that the claimant-appellant had suffered such disablement where there had been restriction of right shoulder, right elbow, mal-unification of fracture of the right arm and fractures of at least four ribs and in view of such extensive injuries and disablement suffered, the amount awarded by the Tribunal particularly towards non-pecuniary loss remains too low and insufficient. The submissions are not well founded.

The Tribunal has taken note of the entire evidence available on record and so far the resultant loss arising from the injuries in question is concerned, the Tribunal has allowed Rs.45,000/- towards loss of earning capacity though the age of the injured-claimant has been taken at 65 years. The Tribunal has taken his monthly income at Rs.3,000/- as agricultural labour and such estimate itself stands on much higher side.

The Tribunal has allowed even Rs.7,300/- towards future treatment and Physiotherapy. Apart from allowing higher amount on all the relevant heads, the Tribunal has also allowed higher rate of interest at 9% per annum from the date of filing of the claim application, i.e. 17.07.2000.

In the ultimate analysis, the award made by the Tribunal in favour of the injured-claimant stands on much higher side ruling out any scope for enhancement.

The appeal fails and is, therefore, dismissed.

(DINESH MAHESHWARI), J.

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